

OCTOBER 1, 2007

KAREN S. MITCHELL
CLERK, U.S. DISTRICT COURTIN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

MICHAEL ANTHONY THOMAS,

Petitioner,

v.

NATHANIEL QUARTERMAN, Director,
Texas Department of Criminal Justice,
Correctional Institutions Division,

Respondent.

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2:07-CV-0172

REPORT AND RECOMMENDATION TO DISMISS
PETITION FOR A WRIT OF HABEAS CORPUS

On August 15, 2007, petitioner filed with this Court a Petition for a Writ of Habeas Corpus wherein he challenges respondent's failure to credit his 15-year sentence with 4 years and 10 months flat or calendar time for the period of time he was on an unsatisfactorily-completed parole or mandatory supervised release. Petitioner failed to pay the filing fee in this case or submit a properly completed and signed Application to Proceed *In Forma Pauperis*. On September 4, 2007, this Court entered an Order allowing petitioner until September 19, 2007 to pay the filing fee, submit an *in forma pauperis* application, or show cause why this case should not be dismissed for failure to pay the requisite filing fee.

On September 4, 2007, petitioner was also ordered to show cause why his petition should not be denied for failure to exhaust the remedies available in the courts of the State. *See* 28 U.S.C. § 2254(b), (c). Petitioner was ordered to file a pleading entitled "Response to Order to Show Cause" with the United States District Clerk on or before September 19, 2007, setting forth with specificity

the reasons why this Court should not dismiss his petition for a writ of habeas corpus in order that he might pursue his state court remedies. Petitioner was warned that failure to timely comply with the Order would result in a recommendation of dismissal of this cause without further notice.

As of this date, petitioner has not filed a response to either of the Court's Orders to show cause and is in direct disregard of this Court's Orders. Nor has petitioner paid the \$5.00 filing fee in this case or submitted an *in forma pauperis* application. Moreover, petitioner has not communicated with the Court, in any manner, with regard to this case. It is the opinion of the undersigned that petitioner has neglected his case to such an extent that it warrants dismissal.

RECOMMENDATION

It is the RECOMMENDATION of the United States Magistrate Judge to the United States District Judge that the Petition for a Writ of Habeas Corpus filed by petitioner MICHAEL ANTHONY THOMAS be DISMISSED for want of prosecution.

INSTRUCTIONS FOR SERVICE

The United States District Clerk is directed to send a copy of this Report and Recommendation to each party by the most efficient means available.

IT IS SO RECOMMENDED.

ENTERED this 1st day of October 2007.


CLINTON E. AVERITTE
UNITED STATES MAGISTRATE JUDGE

*** NOTICE OF RIGHT TO OBJECT ***

Any party may object to these proposed findings, conclusions and recommendation. In the event a party wishes to object, they are hereby NOTIFIED that the deadline for filing objections is eleven (11) days from the date of filing as indicated by the “entered” date directly above the signature line. Service is complete upon mailing, Fed. R. Civ. P. 5(b)(2)(B), or transmission by electronic means, Fed. R. Civ. P. 5(b)(2)(D). When service is made by mail or electronic means, three (3) days are added after the prescribed period. Fed. R. Civ. P. 6(e). Therefore, any objections must be filed on or before the fourteenth (14th) day after this recommendation is filed as indicated by the “entered” date. *See* 28 U.S.C. § 636(b); Fed. R. Civ. P. 72(b); R. 4(a)(1) of Miscellaneous Order No. 6, as authorized by Local Rule 3.1, Local Rules of the United States District Courts for the Northern District of Texas.

Any such objections shall be made in a written pleading entitled “Objections to the Report and Recommendation.” Objecting parties shall file the written objections with the United States District Clerk and serve a copy of such objections on all other parties. A party’s failure to timely file written objections to the proposed findings, conclusions, and recommendation contained in this report shall bar an aggrieved party, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings, legal conclusions, and recommendation set forth by the Magistrate Judge in this report and accepted by the district court. *See Douglass v. United Services Auto. Ass’n*, 79 F.3d 1415, 1428-29 (5th Cir. 1996); *Rodriguez v. Bowen*, 857 F.2d 275, 276-77 (5th Cir. 1988).